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STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

June 23, 2006

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.:01KD-325

KAUAI

Amend Prior Board Action of February 23, 2001 (Item D-11) and August 24, 2001 (Item D-20), Issuance of Revocable Permits to Various Private Parties; Issuance of Immediate Rights of Entry; and Set Asides to DLNR Division of Aquatic Resources, Freshwater Fisheries Development, County of Kauai, DLNR Division of Forestry and Wildlife, and DLNR Division of State Parks, Wailua, Lihue, Kauai Tax Map Keys: (4) 3-9-1:2; 3-9-2:1,9, 20 and 4-2-1:3

BACKGROUND:

The Land Board at its meeting of February 23, 2001, under agenda Item D-11 and subsequently at its meeting of August 24, 2001, under agenda Item D-20, approved to: (1) issue 13 revocable permits to various private parties with special conditions added to the standard revocable permit document; (2) recommend to the Governor the issuance of set asides to DLNR Division of Forestry and Wildlife, DLNR Division of State Parks, DLNR Division of Aquatic Resources, Freshwater Fisheries Development, and the County of Kauai; and (3) issuance of immediate rights-of-entry to all of the private parties for management and site control purposes. Briefly, Lihue Plantation (General Lease No. S-4412) planned closure would return 6,500 acres to the State around January 1, 2001 and East Kauai Water Co., Ltd. (General Lease No. S-3827) would return the East Kauai irrigation system. The Department would need to implement a plan for the continued use of its agricultural lands and the continued maintenance of the irrigation system.

Staff has completed the issuance of 13 revocable permits. Currently, what remains outstanding are the set asides to the various government agencies.

ANALYSIS:

The Attorney General's office is requesting a correction for the set aside to the County of Kauai. It states:

Recommendation C.5. For the land area to be set aside to the County (designated "EO 4" on the map attached hereto), the County or its designee shall operate and manage the activities of the facility users. If such cannot be done, the set aside

shall be cancelled.


"EO 4" covers State lands to set aside to DLNR Division of State Parks for the restrooms at the Fern Grotto State Park, sewage disposal leach field and for a possible buffer zone around Wailua Falls. It is understandably confusing. By identifying the State lands in this manner is not necessary. It was only intended to be used as a reference. Upon closer review of this condition, it is unclear what is meant by "shall operate and manage the activities of the facility users." Therefore, staff is recommending a change that the purpose of the set aside to the County of Kauai be for recreational purposes.

Staff discovered that Land Board approval for the set asides were done twice (February 23, 2001 and August 24, 2001), when only one approval is necessary. Therefore, we are recommending the earlier Land Board approval of February 23, 2001 be deleted.

RECOMMENDATION: That the Board:

- A. Amend its prior action of February 23, 2001, under Item D-11 by:
  - 1. Deleting Recommendation C in its entirety.
- B. Amend its prior action of August 24, 2001, under Item D-20 by:
  - 2. Deleting Recommendation C.5. and replacing it with "The purpose of the set aside to the County of Kauai shall be for recreational purposes."

Respectfully Submitted,

 Chaulene E. Imolei  
Thomas Oi  
Kauai District Land Agent

APPROVED FOR SUBMITTAL:

 Peter T. Young, Chairperson

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

February 23, 2001

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

KAUAI

Issuance of Revocable Permits to Godwin M. Esaki; Lara Butler dba Keapana Horsemanship; GE Farms, Inc.; Leslie P. Milnes; Rodolfo N. and Aurora Bunao; Elesther Calipjo; Michael J. Fernandes; William J. and Alison J. Sanchez; Saiva Siddhanta Church; Manuel H. Andrade, Sr.; Kenneth Bray; Robert H. Ferreira, and Gerald M. Sanchez; Por. of Wailua, Lihue, and Wailua, Kawaihau, Kauai, Tax Map Keys 3-9-1: por. 2, 3-9-2: 1,20 and 4-2-1: 3, and Issuance of Immediate Rights of Entry; and

Set Aside of Various State Lands to the DLNR Division of Aquatic Resources, Freshwater Fisheries Development, for Freshwater Fisheries Development, Wailua, Lihue, Kauai, Tax Map Key 3-9-2: 9 & por. 20; To the County of Kauai for recreational purposes, Wailua, Lihue, Kauai, TMK 3-9-2: por. 20; To the DLNR Division of Forestry and Wildlife for addition to Executive Order No. 3804, Addition to Lihue-Koloa Forest Reserve, Wailua, Lihue, Kauai, TMK 3-9-1: por.2; and to the DLNR Division of State Parks for addition to Executive Order No. 2423, Wailua, Lihue, Kauai, TMK 3-9-2: por. 20

SYNOPSIS: This submittal is similar to Agenda Item D-29 approved by the Land Board on 10/27/2000, which approved a coalition group to take over use of west side lands formerly used by Kekaha Sugar Co.

This submittal is for an East Side coalition user group for the approximate 6,500 acres of land formerly used by Lihue Plantation (not including the water systems. That RP is forthcoming). This coalition group however, does not presently occupy the land as the west side group did.

APPLICANTS &  
EXPERIENCE:

Godwin M. Esaki, married to Janet H. Esaki, as his separate property, whose address is 5571-C Kaapuni Road, Kapaa, Hawaii 96746. Third generation farmer, 37 years crop production experience.

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON

February 23, 2001.

ITEM D-11

13 Private  
Owners  
A Gov't

**Lara Butler dba Keapana Horsemanship**, sole proprietor, whose address is 6291 Kipapa Road, Kapaa, Hawaii 96746. FFA graduate with 20 years experience in horse training, conducting trail rides.

**G.E. Farms, Inc.**, a Hawaii corporation, whose address is 6458 Olu Lane, Kapaa, Hawaii 96746. Corporation created in 1990 general agriculture and cattle. Mr. Rapozo, as one of the general partners, has 30+ years in ranching and providing healthy animals for markets & restaurants.

**Leslie P. Milnes**, married to Anne L. Milnes, as his separate property, whose address is 6277 Puuopae Place, Kapaa, Hawaii 96746. 19 years experience in operating horse farm; 10 years manager & general partner of Garden Island Ranch.

**Rodolfo N. and Aurora Bunao**, husband and wife, whose mailing address is 4264 Lawehana Street, Lihue, Hawaii 96766. 30 years experience as irrigator/equipment operator for Lihue Plantation; currently leases adjacent land from Amfac for pasture and truck crops.

**Elesther Calipjo**, married to Milagrose A. Calipjo, as his separate property, whose address is P.O. Box 1781, Lihue, Hawaii 96766. 8 years experience as owner/operator of landscaping business; 11+ years experience in raising livestock and cultivation of crops.

**Michael J. Fernandez**, married to Alison Fernandes, as his separate property, whose mailing address is 411 Pua Road, Kapaa, Hawaii 96746. 28 years experience as farmer/rancher. FFA graduate

**William J. and Alison J. Sanchez**, husband and wife, whose mailing address is 873-A Kamalu Road, Kapaa, Hawaii 96746. 30 years experience as farmer/rancher. FFA graduate.

**Saiva Siddhanta Church**, a California non-profit corporation, whose address on Kauai is 107 Kaholalele Road, Kapaa, Hawaii 96746. 30+ years experience truck crops, medicinals, pasture, botanical gardens. 14 years experience commercial bee keeping.

**Manuel H. Andrade, Sr.**, married to Phyllis J. Andrade, as his separate property, whose mailing address is P.O. Box 276, Lawai, Hawaii 96765. 37 years experience as farmer/rancher, and slaughterhouse operations.

**Gerald M. Sanchez**, married to Betty L. Sanchez, as his separate property, whose mailing address is 5956 Kuamoo Road, Kapaa, Hawaii 96746. 30 years experience as farmer/rancher, and slaughterhouse operations.

**Kenneth Bray**, married to Jayelle Bray, as his separate property, whose mailing address is 5329 Kahala Street, Kapaa, Hawaii 96746. 30 years experience growing and selling truck crops (taro, watercress, etc) and raising animals.

**Robert H. Ferreira**, single, whose mailing address is P.O. Box 747, Lihue, Hawaii 96766. 13 years of ranch management operations for Kipukai Ranch on Kauai and Big Island Meat on Hawaii. Current president of the Kauai Cattlemen's Association, delegate to the Hawaii Cattlemen's council, chosen Cattleman of the Year 2000 by Hawaii Cattlemen's Association.

**Department of Land and Natural Resources, Division of Aquatic Resources, Freshwater Fisheries Development**, whose mailing address is 1151 Punchbowl Street, Honolulu, Hawaii 96813

**Department of Land and Natural Resources, Division of Forestry and Wildlife**, whose mailing address is 1151 Punchbowl Street, Honolulu, Hawaii 96813

**Department of Land and Natural Resources, Division of State Parks**, whose mailing address is 1151 Punchbowl Street, Honolulu, Hawaii 96813

**County of Kauai**, whose mailing address is 4444 Rice Street, Lihue, Hawaii 96766.

**LEGAL**

**REFERENCE:**

Sections 171-11, -13 and -55, Hawaii Revised Statutes, as amended

LOCATION: Portion of Government lands and waters of Wailua, Lihue, Kauai, Hawaii, Tax Map Keys 3-9-2: 1, 9 & 20, and 3-9-1: por. 2; portion of Government lands of Wailua, Kawaihau, Kauai, Tax Map Keys 4-2-1: 3, as shown on the attached map labeled Exhibit A.

AREA: SEE below, Character of Use

ZONING: **TMK 3-9-2: 1,9,20 and 3-9-1: por. 2**  
State Land Use District - Agricultural  
County of Kauai CZO - Agriculture and Open

**TMK 4-2-1: 3**  
State Land Use District - Conservation District  
(Resource subzone)  
County of Kauai CZO - Open District

LAND TITLE  
STATUS: Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:  
YES for TMKs 3-9-2: 1 & 20; 3-9-1: 2; 4-2-1: 3  
NO for TMK 3-9-2: 9

CURRENT USE  
STATUS: TMKs 3-9-2: 1 & 20; 3-9-1: por.2; 4-2-1: 3  
Unencumbered. Land previously encumbered by GL Nos. S-4412 (land) to Lihue Plantation Co., Ltd., and S-3827 (water) to East Kauai Water Co., Ltd. to be vacated on 12/31/2000

TMK 3-9-2: 9  
Revocable Permit No. S-7160 to Elesther Calipjo, 5.43 acres for intensive agriculture purposes, \$23.00/month. Permit to remain in place until Aquatic Resources requests cancellation.

CHARACTER OF  
USE: **Godwin M. Esaki** - intensive agriculture (50-100 acres, bananas), pasture, and accessory uses, approximately 477.55 net acres, more or less, (approximately 740.22 gross acres),  
TMK 3-9-2: por. 1, Proposed Unit F  
**Keapana Horsemanship** - equestrian pasture (5-15 acres), pasture and accessory uses, approximately

- 167 net acres more or less, (approximately 172.40 gross acres) TMK 3-9-2: por. 20, Proposed Unit B
- GE Farms, Inc.** - pasture and accessory uses, approximately 276.04 net acres more or less, (approximately 305.80 gross acres), TMK 3-9-2: por. 1, Proposed Unit H
- Leslie P. Milnes** - pasture, equestrian pasture (20-50 acres) and accessory uses, approximately 562 net acres more or less, (approximately 752.37 acres gross), TMK 3-9-2: por.1 & por. 20, Proposed Unit E
- Rodolfo N. and Aurora Bunao** - diversified agriculture (50 acres of truck crops), pasture, and accessory uses, approximately 288 net acres more or less, (approximately 386.25 acres gross) TMK 3-9-2: por. 20, Proposed Unit C
- Elesther Calipjo** - diversified agriculture (1-3 acres), pasture, and accessory uses, approximately 47.70 net acres more or less (approximately 64.20 acres gross) TMK 3-9-2: por. 20, Proposed Unit K
- Michael J. Fernandes** - pasture use, approximately 347 net acres more or less, (approximately 369.70 acres gross), TMK 3-9-2: por. 20, Proposed Unit D
- William J. and Alison J. Sanchez** - pasture use, approximately 511.82 net acres more or less, (approximately 630 acres gross), TMK 3-9-2: por. 20, Proposed Unit A
- Saiva Siddhanta Church** - diversified agriculture (20-80 acres in tropicals, medicinals, fruit, etc), pasture, and accessory uses, approximately 327 net acres more or less, (approximately 406.64 gross acres), TMK 3-9-2:por.1, Proposed Unit G
- Manuel H. Andrade, Sr** - pasture use, approximately 528 net acres more or less, (approximately 1,035.50 gross acres), TMK 3-9-2: por. 20 and 3-9-1:por. 1, Proposed Unit I
- Gerald M. Sanchez** - pasture use, approximately 214 acres more or less, TMK 4-2-1: 3, Proposed Unit J
- Kenneth Bray** - diversified agriculture (3-5 acres), pasture, cultural restoration, approximately 90.81 acres net more or less, (approximately 258 acres gross) TMK 3-9-2: por. 1, Proposed Unit L
- Robert H. Ferreira** - pasture use, approximately 344.14 net acres more or less (approximately 370 gross acres more or less), TMK 3-9-2: por. 20, Proposed Unit M

**County of Kauai** - recreational use, approximately 5 acres more or less, TMK 3-9-2: por. 20

**DLNR Division of Forestry and Wildlife**, addition to Lihue-Koloa Forest Reserve, approximately 54 acres more or less, TMK 3-9-1: por. 2

**DLNR Division of Aquatic Resources, Freshwater Fisheries Development**, for freshwater fisheries development, approximately 36.708 acres more or less, TMK 3-9-2: 9 and por. 20;

**DLNR Division of State Parks**, for a lift station and leach field above the Fern Grotto, and for a buffer zone around Wailua Falls, as an addition to Wailua River State Park, approximately 5-10 acres more or less, TMK 3-9-2: por.20

[Note: all areas are as planimetered from HSS Plat Map 3042 B, and from field maps provided by Lihue Plantation Co., Ltd. Difference between net and gross as reflected on Exhibit A are waste areas, reservoirs, roadways, exclusions, areas of withdrawal for the Malae Heiau, DHHL, DOFAW, etc.]

#### COMMENCEMENT

**DATE:** The first day of the month to be determined by the Chairperson

**MONTHLY RENTALS:** Waived for the first three months of the permit start dates. Permittees will absorb operation & maintenance costs of the land in exchange for gratis rent.

Rent thereafter to be determined by Staff Appraisal, subject to review and approval by the Chairperson, and reflective of permittees absorption of operation and maintenance costs.

#### COLLATERAL SECURITY

**DEPOSIT:** Twice the monthly rental

#### LIQUIDATED

**DAMAGES:** Twenty percent (20%) of the monthly rental per day or three dollars (\$3.00) per day, whichever is greater

#### CHAPTER 343

#### ENVIRONMENTAL

#### ASSESSMENT:

Pursuant to HRS subchapter 11-200-8(a)(1), relating to Exempt Classes of Action of the Environmental Impact Statement Rules, the applicants are exempt from Chapter 343 compliance. HRS subchapter 11-200-8(a)(1)



exempts "Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

Should further compliance with Chapter 343, HRS, as amended, be required, said agency or applicant shall be solely responsible for such compliance. This would apply to the County of Kauai and Division of State Parks.

GOVERNMENT AGENCY  
REQUIREMENTS FOR  
SET ASIDE:

- 1) If determined necessary, process and obtain subdivision at Applicant's own expense.
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.
- 3) For the area designated "EO 4" to State Parks and "EO 1" to the County of Kauai, satisfaction of Chapter 343 requirements prior to the implementation of construction, as may be required.

DCCA  
VERIFICATION:

**Godwin M. Esaki**

N/A Applicant applying as individual

**Lara Butler dba Keapana Horsemanship**

Place of business registration confirmed: Yes  
Registered business name confirmed: Yes  
Applicant in good standing confirmed: Yes  
Confirmed 12/12/2000

**GE Farms, Inc.**

Place of business registration confirmed: Yes  
Registered business name confirmed: Yes  
Applicant in good standing confirmed: Yes  
Confirmed 12/12/2000

**Leslie P. Milnes**

N/A Applicant applying as individual

**Rodolfo N. and Aurora Bunao**

N/A Applicants applying as individuals

**Elesther Calipjo**

N/A Applicant applying as individual

**Michael J. Fernandes**

N/A Applicant applying as individual

**William J. and Alison J. Sanchez**

N/A Applicants applying as individuals

**Saiva Siddhanta Church**Place of business registration confirmed: Yes,  
California non-profit

Registered business name confirmed: Yes

Applicant in good standing confirmed: Yes

Confirmed 12/12/2000

**Manuel H. Andrade, Sr.**

N/A Applicant applying as individual

**Gerald M. Sanchez**

N/A Applicant applying as individual

**Kenneth Bray**

N/A Applicant applying as individual

**Robert H. Ferreira**

N/A Applicant applying as individual

**County of Kauai**

N/A Government

**DLNR Division of Forestry and Wildlife**

N/A Government agency

**DLNR Division of Aquatic Resources, Freshwater  
Fisheries Development**

N/A Government Agency

**DLNR Division of State Parks**

N/A Government Agency

**COMMENTS:**

Comments requested from DOFAW, DOCARE, Aquatic Resources, State Parks, Historic Preservation; Kauai County Farm Bureau; County of Kauai Burial Council; County Planning, Water, Public Works, Fire Department. As of the date this submittal was re-written, comments have been received from:

- **Office of Hawaiian Affairs.** SEE Attachment B, and KDLO's response Attachment C
- **Leopold "Butch" Durant, Jr** a kanaka maoli representing all kanaka maoli in the ownership of these lands, notified the Kauai District Land Office of his pending claim to the Tax Appeal Court of the State of Hawaii. SEE Attachment D
- **State Parks.** SEE Attachment E. Inasmuch as an ROE and easement is preferred over a set aside, it has been determined that the proposed sewer system improvements would be considered permanent uses for the land, and would be more appropriately addressed via a set aside. Additionally, expansion of the park mauka would not be appropriate at this time as it would impact the primary access to the interior of the land. This could be resolved after use of the land by the Coalition group has stabilized. In the short term, setbacks will be utilized along the drainage channel to satisfy Parks concerns.
- **Historic Preservation Division.** See Attachment F. Their recommendations have been incorporated.

## REMARKS:

**Closure of 2 Plantations.** On 10/27/2000, the Land Board approved Agenda Items D-29 and D-30 related to the issuance of revocable permits to a coalition group of 5 who would replace Kekaha Sugar Co. on the approximately 28,000 acres of government land on the West Side of Kauai. Reference to the approximate 6,500 acres on the East Side was made, especially the complexity of the East Kauai irrigation system. The west side template is similarly being utilized for the east side, in that a long term lease could be considered being issued to an entity comprised of these permittees. This is discussed further in this report.

As with the closure of previous sugar plantations, concerns regarding hazardous waste and abandoned wells were addressed in a 1/18/01 letter from KDLO to AMFAC. Site cleanup and/or capping is expected as part of AMFAC's exit plan.

**East Kauai impacts.** There, approximately 6,500 acres of land will be returned to State control commencing January 1, 2001. Even more complex than the West Kauai irrigation system is the East Kauai Water system which weaves in and out of State land and many private properties in an area stretching from Kealia/Kapaa to

Lihue. *This submittal does not deal with the water issues - a subsequent submittal will.* Meetings with elected officials, potential users, the Farm Bureau, NRCS, Amfac/Lihue Plantation, and water system consultants/managers have been held and will continue.

Additionally, the State has hired a consultant who is charged with studying the water system and make recommendations approximately 3 months from now.

Similarly with the west side, KDLO's first priority was to develop and implement a plan that would assure the continued use of these prime agricultural lands on the East Side and preservation of the irreplaceable support infrastructure.

**Stakeholders.** The stakeholders include diversified agricultural interests (Esaki, Bunao, Calipjo, Bray, Saiva Siddhanta), cattle ranchers (GE Farms, G. Sanchez, Milnes, Andrade, W. Sanchez, R. Ferreira), equestrian (Keapana, Milnes), and cultural restoration (Bray). All of the stakeholders are applicants for short term revocable permits for roughly 6,500 acres of the former sugar cane lands. All submitted timely applications shortly after Amfac announced closure of their plantations, and were deemed qualified pursuant to Chapter 171-14.5, HRS, based on agricultural experience and/or education. This "East Kauai coalition group" has already commenced in the formation of a legal entity now known as the **Kalepa Koalition.**

All applications submitted and accepted by KDLO were done with the following understandings:

- Water, and the provision of it, was not guaranteed nor a part of their request for the use of the land. A collective effort by the group would be needed to address the irrigation water issue. Alternatives existed for the near time based on the 3 rainfall belts that affect the property, and the willingness by some to either haul water, or drill wells.
- Land rent was unknown, and would not be known until well into the process. At the time rent levels were established, the applicant could then decide whether to remain or drop out.

KDLO, with the assistance of the County Planning Department, created "economic units" for the proposed applicants, utilizing existing features such as roadways, valley rims, or streams as natural boundaries.

The following stakeholders have State leases or permits: Saiva Siddhanta (GL No. S-5153, current and in good standing); Manuel H. Andrade, Sr (GL Nos. S-4863, 5120 5517; RP No. S-6790, all current, all in good standing); Elesther Calipjo, RP No. S-7160, current and in good standing); William Sanchez (GL Nos. S-5346, 5349, 5519, 5583; RP No. S-7199, all current, all in good standing).

The following stakeholders do not have State leases or permits - Milnes, G. Sanchez, Ferreira, Bunao, Butler, Esaki and Bray.

One of the principals of GE Farms, Inc. is Mervin Rapozo who has GL No. S-5115 (current and in good standing), and had GL No. S-5243 mutually cancelled by the Board in 11/96, prior to the implementation of the mutual cancellation policy of the Division. Present lessee and applicant Manuel H. Andrade Sr. is the Kauai Division Chief for DOCARE. Applicant Bray is a kanaka maoli whose interest in the land beyond agricultural use is the restoration of a lo'i and taro field in the gully areas of his unit.

Applicants have not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

**Other interest.** As of the date this submittal was re-written (1/30/01), there is one (1) other application for use of these East Kauai State lands. This application was received well after the planning for the lands had commenced. This application will be treated as a first alternate should any of the original applicants withdraw. There have been other inquiries, both on an individual basis, and representing hui groups, with qualification applications distributed to them, but none have been returned.

**Strategy.** The month-to-month strategy coupled with immediate rights-of-entry to the land will enable a seamless transfer of users to the property as may be possible, under the circumstances, plus put under management the most important portions of the infrastructure (historic irrigation ditch systems, reservoirs, roadways, etc.). Staff recommends that land rent for these initial permits be waived for the first 3 months as a means to facilitate the permittee's move onto the land and to help defray the operating and maintenance costs associated with the support infrastructure (gates, fencing, landclearing, ditch clearing, etc).

Also of short term importance is the provision of isolated land areas in which to relocate banana operations due to the present banana blight on East Kauai.

**Long range plan.** Once the farmable acreage is stabilized and the infrastructure under care, the Kalepa Koalition will move forward with plans to apply for a long term lease for the property under either HRS Chapter 171-59(a) or (b). However, these discussions have not advanced to the point where we have any meaningful detail to share with the Board.

One theory is that the entity when organized, will lease all of the farmable land and the infrastructure that support it, then be responsible for making lands available to members/users under sub-leases or other types of use agreements on a shared rent, shared cost basis. State oversight would be a part of the process.

Another alternative that will be explored is the possibility of subdividing these lands based on the economic units created, and disposing of long term leases at public auction. However, subdivision requirements will need to be explored, including the required infrastructure extensions and/or upgrades where there are presently none.

**Other issues.** As the Board considers the issuance of revocable permits, it should do so with the understanding that there are other important issues that need to be resolved, such as:

- the amount of rent the stakeholders will be expected to pay after the 3 month rent waiver expires. The Kalepa Koalition, by letter dated 1/24/01, and attached as Attachment G, is requesting that the rent be established at \$5 per acre per year, "...subject to appraisal and renegotiation in five years, due to the extraordinary effort, expense and personal risk involved in taking control of 10 square miles of land now overrun on a daily basis by hunters, bikers and sightseers who are cutting chains, locks and metal gates with welding equipment on a daily basis";
- to what degree, if any, will State or County programs participate in the operation, maintenance and upgrades to the property, especially in regards to providing irrigation water to the land. As stated earlier above, a Water Permit for the water segment will be submitted shortly to the Land Board for consideration.

There are two possibilities. One is the East Kauai Water Users Association, which is now in the process of being formed as a result of Lihue Plantation's GL 3827 being terminated shortly. This association is being formed to take control of the reservoir and ditch system in the Kapaa area. The second is that the Kalepa Koalition apply for the permit. In either case, the water system needs to be addressed after the land issue is settled. SEE Attachment H.

- will the prospective permittees be shielded from liability for unanticipated environmental situations if such are found after they move onto the property;
- to what degree will Amfac leave the property in good working order;
- these lands have never been culturally or historically surveyed. Certainly before a lease is issued, this concern needs to be resolved. In the interim, the permittee's will need to cooperate with the DLNR island archaeologist and the County's cultural sites committee.

- DOFAW has identified miconia sites within the adjacent river valleys. Access and staging areas need to be provided by the permittees.
- State Parks may require land area above the tourist attraction Fern Grotto for pumping and disposal purposes;
- The president of the Kauai Hunting Association requested that additional cane land areas be added to the adjacent Wailua Game Management Area. KDLO provided a response dated 1/30/01. Mr. Yamauchi responded, and included a complaint to the Attorney General. SEE Attachment I collectively.

A withdrawal condition already exists in our standard permit template should the need arise for additional hunting areas. This need would be related to the loss of hunting lands due to an on-going project for the designation of critical habitat's by the U.S. Fish & Wildlife Service, and our inability to provide alternate land areas.

The provision of hunting areas, with tenants using the land, especially with month to month permits, would not be appropriate nor safe. This matter can be better addressed prior to a long term encumbrance being issued for the property.

**Set Asides.** Land areas are being identified by government agencies for their programs:

- State Parks requires additional land area on the plateau in order to provide a lift station for the restrooms at the Fern Grotto State park, sewage disposal leach field, and for a possible buffer zone around Wailua Falls.

The land area involved (approximately 5-10 acres +/-) is adjacent to the river valley, and was previously utilized for the growing of sugarcane. This area can be reduced should a condition be placed on the permit areas around the Wailua Falls maintaining a vegetative buffer zone around



the valley rim. Additionally, the area requested by State Parks impacts a major access roadway into these lands by the tenants. Land use and tenant traffic needs should be established before additional land areas around Wailua Falls is considered for set aside. For the lift station and leach field use, Chapter 343 requirements must be met prior to the implementation of the lift station and leach field portions of this project.

- DOFAW has requested additional land area for the addition to the Lihue-Koloa Forest Reserve, and to straighten out the boundary line. The two land areas involved were previously utilized for the growing of sugarcane, and totals approximately 52 acres.
- The County of Kauai has requested approximately 5-10 acres in which to relocate their moto-cross track to a permanent location. Their existing track in Wailua, adjacent to a resort development and the Wailua Golf Course, needs to be relocated due to adverse dust and noise impacts.

The land area involved was previously utilized for the growing of sugarcane. Of concern by the coalition group is the need for the County or its designee to strictly monitor the activities of the users of the motocross track to limit their activities to the site, and not the surrounding agricultural lands. If this cannot be ensured, the set aside should be cancelled.

- DAR has requested land areas (which have 9 earthen ponds) in order to overall, enhance recreational fishing opportunities for the general public and visitors, and by (specifically) creating a resource base for a new series of industries to center around freshwater fishing and its needs. This would include the creation and development of stock enhancement programs. There are 3 elements to this program: land area in Hanapepe has already been approved for set aside, and is to function as a hatchery

site; the subject area with 9 ponds would function as grow out ponds. The third element is Sloggett Reservoir in Wailua Homesteads (previously encumbered by lease to East Kauai Water Co.), which currently is publicly fished by trespass.

The subject land areas were waste areas (valley) within the sugarcane plantation.

The areas subject of these set asides do not impact the overall use scheme of the government lands. They would be considered the highest and best use given the previous agricultural use of the land, zoning, topography, and location. They in turn would enhance public recreational opportunities where none presently exist, and preserve agricultural lands for agricultural uses.

Considerations. All of these issues and more are under active discussion and we will soon have answers for all of them. Meanwhile, we are driven to move forward with getting users on the land because we believe that placing this property under immediate care fulfills our trust responsibility as land managers. Additionally, DOCARE and DOFAW have already notified KDLO of the increasing numbers of hunters, motocross and 4-wheel drive vehicles accessing the land areas.

RECOMMENDATION: That the Board

- A. Find that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, the disposition will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of any environmental assessment.
- B. Authorize the issuance of revocable permits to the following entities: Godwin M. Esaki; Lara Butler dba Keapana Horsemanship; G.E. Farms, Inc.; Leslie P. Milnes; Rodolfo N. & Aurora Bunao; Elesther Calipjo; Michael J. Fernandez; William J. & Alison J. Sanchez; Saiva Siddhanta Church; Manuel H. Andrade, Sr.; Gerald M. Sanchez; Kenneth Bray; and Robert H. Ferreira covering the subject areas for

the uses reflected in the Character of Use section above under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

1. The standard terms and conditions of the most current revocable permit form, as may be amended to accommodate the circumstances of this request.
2. Review and approval by the Department of the Attorney General;
3.
  - a. Permittees shall not be held liable for existing conditions which may be associated with previous use of the land by Amfac.
  - b. Permits will subordinate to any long term leases .
  - c. Acceptance of these permits will be subject to final inspection of the premises.
  - d. Permittee's shall maintain the existing vegetative buffer zones along the plateau and valley rims. Any clearing or trimming activities shall be upon approval of the district office, in consultation with State Parks and Forestry.
  - e. Permittee for Unit J shall permit access through the property.
4. With the issuance of these permits, the permittees agree to collectively be responsible for the maintenance and operation of the infrastructure necessary to support the permittees use of the land.
5. Permittee's shall cooperate with any government requirements, specifically relating to cultural and historical site identification; miconia eradication; expansion of State Parks, etc.
6. Conditions and requirements as discussed above
7. As recommended by the Historic Preservation Division:
  - a. In former sugarcane lands, plantation era historic sites such as bridges and irrigation ditches shall be

preserved or shall be maintained. If it is proposed to destroy these historic sites, then the State Historic Preservation Division shall be contacted to determine what if any site documentation is needed (742-7033).

- b. No land clearing or land alteration may take place in the gulches or wastelands (gullies, valleys, ridges and mountains) without the following steps taking place: (a) The Historic Preservation Division (742-7033) shall be contacted by the applicant to discuss the proposed undertaking and to enable the Division's staff to conduct a field check to determine if historic sites are present. (b) If historic sites are present and the undertaking will likely impact them, the applicant shall have an archaeologist inventory survey be conducted by a qualified archaeologist prior and an acceptable survey report shall be submitted to the State Historic Preservation Division for review and approval. This report shall identify any significant historic sites and propose any mitigation measures that are needed. (c) If significant historic sites are found and mitigation is needed, then detailed mitigation plans (scopes of work) shall be submitted to the State Historic Preservation Division for review and approval, and these plans shall be successfully executed prior to any land alteration.
  - c. If burials are discovered, a burial treatment plan shall be prepared for burial discoveries encountered during the project. In addition, consultation with the appropriate ethnic groups, the procedures outlined in Chapter 6E-43 shall be followed. It is necessary for the treatment plan to be prepared after consultation with native Hawaiians, such as the Kauai Island Burial Council and the Office of Hawaiian Affairs.
8. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

C. Approve the set aside of lands identified above, and recommend to the Governor the issuance of Executive Orders setting aside the subject areas to the DLNR Division of Forestry and Wildlife; DLNR Division of State Parks; DLNR Division of Aquatic Resources, Freshwater Fisheries Development; and the County of Kauai, subject to the terms and conditions cited above, which are by this reference incorporated herein, and subject further to the following:

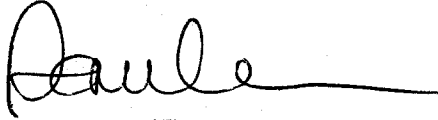
1. The standard terms and conditions of the most current executive order form, as may be amended from time to time.
2. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside.
3. Review and approval by the Department of the Attorney General.
4. Requirements as set forth in the section above entitled "Government Agency Requirements for Set Aside."
5. For the land area to be set aside to the County (designated "EO 4" on the map attached hereto), the County or its designee shall operate and manage the activities of the facility users. If such cannot be done, the set aside shall be cancelled.
6. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

D. Authorize the issuance of immediate rights-of-entry to the above named entities for management and site control purposes, subject to the following:

1. The standard terms and conditions of the most current right of entry document form, as may be amended from time to time.

2. Such other terms and conditions of the most current right of entry document form, as may be amended from time to time.

Respectfully Submitted,



SAM LEE  
Kauai District Land Agent



APPROVED FOR SUBMITTAL:



GILBERT S. COLOMA-AGARAN, Chairperson

D-20

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

August 24, 2001

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

KAUAI

Amend Board Approval of 2/26/01, Agenda Item D-11, Issuance of Revocable Permits to Godwin M. Esaki; Lara Butler dba Keapana Horsemanship; GE Farms, Inc.; Leslie P. Milnes; Rodolfo N. and Aurora Bunao; Elesther Calipjo; Michael J. Fernandes; William J. and Alison J. Sanchez; Saiva Siddhanta Church; Manuel H. Andrade, Sr.; Kenneth Bray; Kelly Gooding, and Gerald M. Sanchez; Por. of Wailua, Lihue, and Wailua, Kawaihau, Kauai, Tax Map Keys 3-9-1: por. 2, 3-9-2: 1,20 and 4-2-1: 3, and Issuance of Immediate Rights of Entry; and

Set Aside of Various State Lands to the DLNR Division of Aquatic Resources, Freshwater Fisheries Development, for Freshwater Fisheries Development, Wailua, Lihue, Kauai, Tax Map Key 3-9-2: 9 & por. 20; To the County of Kauai for recreational purposes, Wailua, Lihue, Kauai, TMK 3-9-2: por. 20; To the DLNR Division of Forestry and Wildlife for addition to Executive Order No. 3804, Addition to Lihue-Koloa Forest Reserve, Wailua, Lihue, Kauai, TMK 3-9-1: por.2; and to the DLNR Division of State Parks for addition to Executive Order No. 2423, Wailua, Lihue, Kauai, TMK 3-9-2: por. 20

SYNOPSIS: On February 23, 2001, the Board approved Agenda Item D-11. This approval placed a 13 member user group on the land to replace Lihue Plantation's use of approximately 6,700 acres of land.

The proposed amendments are numerous, however, the thrust of the original intent - to place agricultural users on the land to replace Lihue Plantation's operation - has not changed. The range of revisions include: the replacing of a member who dropped out, relocating another member and the County's moto-cross track, refining unit sizes, creation of an additional 2 small units for the purpose of agricultural processing, establishing performance conditions, and considering a buy-back proposal from the 13-member Kalepa Koalition. Rather than confuse the Board, staff has opted to re-present the entire package.

AMENDED AND  
APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON

8/24/01

ITEM D-20

The only element not being adjusted is the immediate right of entry granted by the Board: members have used this authorization to commence with use, fencing and clearing activities.

APPLICANTS &  
EXPERIENCE:

Godwin M. Esaki, married to Janet H. Esaki, as his separate property, whose address is 5571-C Kaapuni Road, Kapaa, Hawaii 96746. Third generation farmer, 37 years crop production experience.

Lara Butler dba Keapana Horsemanship, sole proprietor, whose address is 6291 Kipapa Road, Kapaa, Hawaii 96746. FFA graduate with 20 years experience in horse training, conducting trail rides.

G.E. Farms, Inc., a Hawaii corporation, whose address is 6458 Olu Lane, Kapaa, Hawaii 96746. Corporation created in 1990 general agriculture and cattle. Mr. Rapozo, as one of the general partners, has 30+ years in ranching and providing healthy animals for markets & restaurants.

Leslie P. Milnes, married to Anne L. Milnes, as his separate property, whose address is 6277 Puuopae Place, Kapaa, Hawaii 96746. 19 years experience in operating horse farm; 10 years manager & general partner of Garden Island Ranch.

Rodolfo N. and Aurora Bunao, husband and wife, whose mailing address is 4264 Lawehana Street, Lihue, Hawaii 96766. 30 years experience as irrigator/equipment operator for Lihue Plantation; currently leases adjacent land from Amfac for pasture and truck crops.

Elesther Calipjo, married to Milagrose A. Calipjo, as his separate property, whose address is P.O. Box 1781, Lihue, Hawaii 96766. 8 years experience as owner/operator of landscaping business; 11+ years experience in raising livestock and cultivation of crops.

Michael J. Fernandez, married to Alison Fernandes, as his separate property, whose mailing address is 411 Pua Road, Kapaa, Hawaii 96746. 28 years experience as farmer/rancher. FFA graduate



William J. and Alison J. Sanchez, husband and wife, whose mailing address is 873-A Kamalu Road, Kapaa, Hawaii 96746. 30 years experience as farmer/rancher. FFA graduate.

Saiva Siddhanta Church, a California non-profit corporation, whose address on Kauai is 107 Kaholalele Road, Kapaa, Hawaii 96746. 30+ years experience truck crops, medicinals, pasture, botanical gardens. 14 years experience commercial bee keeping.

Manuel H. Andrade, Sr., married to Phyllis J. Andrade, as his separate property, whose mailing address is P.O. Box 276, Lawai, Hawaii 96765. 37 years experience as farmer/rancher, and slaughterhouse operations.

Gerald M. Sanchez, married to Betty L. Sanchez, as his separate property, whose mailing address is 5956 Kuamoo Road, Kapaa, Hawaii 96746. 30 years experience as farmer/rancher, and slaughterhouse operations.

Kenneth Bray, married to Jayelle Bray, as his separate property, whose mailing address is 5329 Kahala Street, Kapaa, Hawaii 96746. 30 years experience growing and selling truck crops (taro, watercress, etc) and raising animals.

Kelly Gooding, single, whose mailing address is 2887 Waa Road, Lihue, Hawaii 96766. Mr. Gooding has a Bachelor of Science in Agricultural Engineering and 12 years experience in ranching, intensive agriculture, and packaging and marketing of those products.

Department of Land and Natural Resources, Division of Aquatic Resources, Freshwater Fisheries Development, whose mailing address is 1151 Punchbowl Street, Honolulu, Hawaii 96813

Department of Land and Natural Resources, Division of Forestry and Wildlife, whose mailing address is 1151 Punchbowl Street, Honolulu, Hawaii 96813

Department of Land and Natural Resources, Division of State Parks, whose mailing address is 1151 Punchbowl Street, Honolulu, Hawaii 96813

County of Kauai, whose mailing address is 4444 Rice Street, Lihue, Hawaii 96766.

LEGAL

REFERENCE:

Sections 171-11, -13 and -55, Hawaii Revised Statutes, as amended

LOCATION:

Portion of Government lands and waters of Wailua, Lihue, Kauai, Hawaii, Tax Map Keys 3-9-2: 1, 9 & 20, and 3-9-1: por. 2; portion of Government lands of Wailua, Kawaihau, Kauai, Tax Map Keys 4-2-1: 3, as shown on the attached map labeled Exhibit A.

AREA:

SEE below, Character of Use

ZONING:

TMK 3-9-2: 1, 9, 20 and 3-9-1: por. 2  
State Land Use District - Agricultural  
County of Kauai CZO - Agriculture and Open

TMK 4-2-1: 3  
State Land Use District - Conservation District  
(Resource subzone)  
County of Kauai CZO - Open District

TRUST LAND  
STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:

YES for TMKs 3-9-2: 1 & 20; 3-9-1: 2; 4-2-1: 3  
NO for TMK 3-9-2: 9

CURRENT USE  
STATUS:

TMKs 3-9-2: 1 & 20; 3-9-1: por. 2; 4-2-1: 3  
Unencumbered. Land previously encumbered by GL Nos. S-4412 (land) to Lihue Plantation Co., Ltd., and S-3827 (water) to East Kauai Water Co., Ltd. vacated on 12/31/2000

TMK 3-9-2: 9  
Revocable Permit No. S-7160 to Elesther Calipjo, 5.43 acres for intensive agriculture purposes, \$23.00/month. Permit to remain in place until Aquatic Resources requests cancellation.

CHARACTER OF  
USE:

- Godwin M. Esaki - intensive agriculture (50-100 acres, bananas), pasture, and accessory uses, approximately 466 net acres, more or less, (approximately 731 gross acres), TMK 3-9-2: por. 1, Proposed Unit F. Additionally, 2.0 acres of Proposed HSPA Unit #1 for agricultural processing and accessory uses, TMK 3-9-2: por. 20.
- Keapana Horsemanship - equestrian pasture (5-15 acres), pasture, commercial horseback trail riding, and accessory uses, approximately 148 net acres more or less, (approximately 156 gross acres) TMK 3-9-2: por. 20, Proposed Unit B
- GE Farms, Inc. - pasture and accessory uses, approximately 351 net acres more or less, (approximately 388 gross acres), TMK 3-9-2: por. 1, Proposed Unit H
- Leslie P. Milnes - pasture, equestrian pasture (20-50 acres) and accessory uses, approximately 562 net acres more or less, (approximately 752.37 acres gross), TMK 3-9-2: por.1 & por. 20, Proposed Unit E
- Rodolfo N. and Aurora Bunao - diversified agriculture (50 acres of truck crops), pasture, and accessory uses, approximately 243 net acres more or less, (approximately 247 acres gross) TMK 3-9-2: por. 20, Proposed Unit C
- Elesther Calipjo - diversified agriculture (5-10 acres), pasture, and accessory uses, approximately 318 net acres more or less (approximately 432 acres gross) TMK 3-9-2: por. 20, Proposed Unit K
- Michael J. Fernandes - pasture use, approximately 347 net acres more or less, (approximately 369.70 acres gross), TMK 3-9-2: por. 20, Proposed Unit D
- William J. and Alison J. Sanchez - pasture use, approximately 631 net acres more or less, (approximately 769 acres gross), TMK 3-9-2: por. 20, Proposed Unit A
- Saiva Siddhanta Church - diversified agriculture (20-80 acres in tropicals, medicinals, fruit, etc), pasture, and accessory uses, approximately 327 net acres more or less, (approximately 406.64 gross acres), TMK 3-9-2:por.1, Proposed Unit G

Manuel H. Andrade, Sr - pasture use, approximately 462 net acres more or less, (approximately 963 gross acres), TMK 3-9-2: por. 20 and 3-9-1:por. 1, Proposed Unit I

Gerald M. Sanchez - pasture use, approximately 214 acres more or less, TMK 4-2-1: 3, Proposed Unit J

Kenneth Bray - diversified agriculture (3-5 acres), pasture, cultural restoration, approximately 90.81 acres net more or less, (approximately 258 acres gross) TMK 3-9-2: por. 1, Proposed Unit L

Kelly Gooding - intensive agriculture use, approximately 19 acres more or less, TMK 3-9-2: por. 20, Proposed Unit HSPA #3.

County of Kauai - recreational use, approximately 18 acres more or less, mauka of Maalo Road, TMK 3-9-2: por. 20

DLNR Division of Forestry and Wildlife, addition to Lihue-Koloa Forest Reserve, approximately 54 acres more or less, TMK 3-9-1: por. 2

DLNR Division of Aquatic Resources, Freshwater Fisheries Development, for freshwater fisheries development, approximately 36.708 acres more or less, TMK 3-9-2: 9 and por. 20;

DLNR Division of State Parks, for a lift station and leach field above the Fern Grotto, and for a buffer zone around Wailua Falls, as an addition to Wailua River State Park, approximately 5-10 acres more or less, TMK 3-9-2: por.20

[Note: all areas are as planimetered from HSS Plat Map 3042 B, and from field maps provided by Lihue Plantation Co., Ltd. Difference between net and gross as reflected on Exhibit A are waste areas, reservoirs, roadways, exclusions, areas of withdrawal for the Malae Heiau, DHHL, DOFAW, etc.]

COMMENCEMENT

DATE:

The first day of the month to be determined by the Chairperson

MONTHLY RENTALS: Waived for the first three months of the permit start dates. Permittees will absorb operation & maintenance costs of the land in exchange for gratis rent.

Rent thereafter to be determined by Staff Appraisal, subject to review and approval by the Chairperson, and reflective of permittees absorption of operation and maintenance costs.

COLLATERAL SECURITY

DEPOSIT: Twice the monthly rental

LIQUIDATED

DAMAGES: Twenty percent (20%) of the monthly rental per day or three dollars (\$3.00) per day, whichever is greater

CHAPTER 343  
ENVIRONMENTAL  
ASSESSMENT:

Pursuant to HRS subchapter 11-200-8(a)(1), relating to Exempt Classes of Action of the Environmental Impact Statement Rules, the applicants are exempt from Chapter 343 compliance. HRS subchapter 11-200-8(a)(1) exempts "Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing." Uses such as intensive agriculture, pasture, aquaculture, etc. did exist.

Should further compliance with Chapter 343, HRS, as amended, be required, said agency or applicant shall be solely responsible for such compliance. This would apply to the County of Kauai and Division of State Parks.

GOVERNMENT AGENCY  
REQUIREMENTS FOR  
SET ASIDE:

- 1) If determined necessary, process and obtain subdivision at Applicant's own expense.
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.
- 3) For the area designated "EO 4" to State Parks and "EO 1" to the County of Kauai, satisfaction of Chapter 343 requirements prior to the implementation of construction, as may be required.

DCCA

VERIFICATION:

Godwin M. Esaki

N/A Applicant applying as individual

Lara Butler dba Keapana Horsemanship

Place of business registration confirmed: Yes

Registered business name confirmed: Yes

Applicant in good standing confirmed: Yes

Confirmed 12/12/2000

GE Farms, Inc.

Place of business registration confirmed: Yes

Registered business name confirmed: Yes

Applicant in good standing confirmed: Yes

Confirmed 12/12/2000

Leslie P. Milnes

N/A Applicant applying as individual

Rodolfo N. and Aurora Bunao

N/A Applicants applying as individuals

Elesther Calipjo

N/A Applicant applying as individual

Michael J. Fernandes

N/A Applicant applying as individual

William J. and Alison J. Sanchez

N/A Applicants applying as individuals

Saiva Siddhanta Church

Place of business registration confirmed: Yes,  
California non-profit

Registered business name confirmed: Yes

Applicant in good standing confirmed: Yes

Confirmed 12/12/2000

Manuel H. Andrade, Sr.

N/A Applicant applying as individual

Gerald M. Sanchez

N/A Applicant applying as individual

Kenneth Bray  
N/A Applicant applying as individual

Kelly Gooding  
N/A Applicant applying as individual

County of Kauai  
N/A Government

DLNR Division of Forestry and Wildlife  
N/A Government agency

DLNR Division of Aquatic Resources, Freshwater  
Fisheries Development  
N/A Government Agency

DLNR Division of State Parks  
N/A Government Agency

**COMMENTS:**

Comments requested from DOFAW, DOCARE, Aquatic Resources, State Parks, Historic Preservation; Kauai County Farm Bureau; County of Kauai Burial Council; County Planning, Water, Public Works, Fire Department. As of the date this submittal was re-written, comments have been received from:

- *Office of Hawaiian Affairs.* SEE Attachment B, and KDLO's response Attachment C
- *Leopold "Butch" Durant, Jr* a kanaka maoli representing all kanaka maoli in the ownership of these lands, notified the Kauai District Land Office of his pending claim to the Tax Appeal Court of the State of Hawaii. SEE Attachment D
- *State Parks.* SEE Attachment E. Inasmuch as an ROE and easement is preferred over a set aside, it has been determined that the proposed sewer system improvements would be considered permanent uses for the land, and would be more appropriately addressed via a set aside. Additionally, expansion of the park mauka would not be appropriate at this time as it would impact the primary access to the interior of the land. This could be resolved after use of the land by the Coalition group has stabilized. In the short term, setbacks will be utilized along the drainage channel to satisfy Parks concerns.

- *Historic Preservation Division.* See Attachment F. Their recommendations have been incorporated.

REMARKS:

Closure of 2 Plantations. On 10/27/2000, the Land Board approved Agenda Items D-29 and D-30 related to the issuance of revocable permits to a coalition group of 5 who would replace Kekaha Sugar Co. on the approximately 28,000 acres of government land on the West Side of Kauai. Reference to the approximate 6,500 acres on the East Side was made, especially the complexity of the East Kauai irrigation system. The west side template is similarly being utilized for the east side, in that a long term lease could be considered being issued to an entity comprised of these permittees. This is discussed further in this report.

As with the closure of previous sugar plantations, concerns regarding hazardous waste and abandoned wells were addressed in a 1/18/01 letter from KDLO to AMFAC. Site cleanup and/or capping is expected as part of AMFAC's exit plan.

East Kauai impacts. There, approximately 6,700 acres of land will be returned to State control commencing January 1, 2001. Even more complex than the West Kauai irrigation system is the East Kauai Water system which weaves in and out of State land and many private properties in an area stretching from Kealia/Kapaa to Lihue. *This submittal does not deal with the water issues - a subsequent submittal will.* Meetings with elected officials, potential users, the Farm Bureau, NRCS, Amfac/Lihue Plantation, and water system consultants/managers have been held and will continue.

Additionally, the State has hired a consultant who is charged with studying the water system and make recommendations approximately 3 months from now.

Similarly with the west side, KDLO's first priority was to develop and implement a plan that would assure the continued use of these prime agricultural lands on the East Side and preservation of the irreplaceable support infrastructure.



Stakeholders. The stakeholders include diversified agricultural interests (Esaki, Bunao, Calipjo, Bray, Saiva Siddhanta, Gooding), cattle ranchers (GE Farms, G. Sanchez, Milnes, Andrade, W. Sanchez,) equestrian (Keapana, Milnes), and cultural restoration (Bray). All of the stakeholders are applicants for short term revocable permits for roughly 6,700 acres of the former sugar cane lands. All submitted timely applications shortly after Amfac announced closure of their plantations, and were deemed qualified pursuant to Chapter 171-14.5, HRS, based on agricultural experience and/or education. This "East Kauai coalition group" has already commenced in the formation of a legal entity now known as the Kalepa Koalition.

All applications submitted and accepted by KDLO were done with the following understandings:

- Water, and the provision of it, was not guaranteed nor a part of their request for the use of the land. A collective effort by the group would be needed to address the irrigation water issue. Alternatives existed for the near time based on the 3 rainfall belts that affect the property, and the willingness by some to either haul water, or drill wells.
- Land rent was unknown, and would not be known until well into the process. At the time rent levels were established, the applicant could then decide whether to remain or drop out.

KDLO, with the assistance of the County Planning Department, created "economic units" for the proposed applicants, utilizing existing features such as roadways, valley rims, or streams as natural boundaries.

The following stakeholders have State leases or permits: Saiva Siddhanta (GL No. S-5153, current and in good standing); Manuel H. Andrade, Sr (GL Nos. S-4863, 5120 5517; RP No. S-6790, all current, all in good standing); Elesther Calipjo, RP No. S-7160, current and in good standing); William Sanchez (GL Nos. S-5346, 5349, 5519, 5583; RP No. S-7199, all current, all in good standing).

The following stakeholders do not have State leases or permits - Milnes, G. Sanchez, Gooding, Bunao, Butler, Esaki and Bray.

One of the principals of GE Farms, Inc. is Mervin Rapozo who has GL No. S-5115 (current and in good standing), and had GL No. S-5243 mutually cancelled by the Board in 11/96, prior to the implementation of the mutual cancellation policy of the Division. Present lessee and applicant Manuel H. Andrade Sr. is the now retired Kauai Division Chief for DOCARE. Applicant Bray is a kanaka maoli whose interest in the land beyond agricultural use is the restoration of a lo'i and taro field in the gully areas of his unit.

Applicants have not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Other interest. As of the date this submittal was re-written (8/6/01), there are two (2) other applications for use of these East Kauai State lands. These applications were received well after the planning for the lands had commenced. These applications will be treated as alternates should any of the original applicants withdraw. There have been other inquiries, both on an individual basis, and representing hui groups, with qualification applications distributed to them, but none have been returned.

Strategy. The month-to-month strategy coupled with immediate rights-of-entry to the land will enable a seamless transfer of users to the property as may be possible, under the circumstances, plus put under management the most important portions of the infrastructure (historic irrigation ditch systems, reservoirs, roadways, etc.). Staff recommends that land rent for these initial permits be waived for the first 3 months as a means to facilitate the permittee's move onto the land and to help defray the operating and maintenance costs associated with the support infrastructure (gates, fencing, landclearing, ditch clearing, etc.).

Also of short term importance is the provision of isolated land areas in which to relocate banana operations due to the present banana blight on East Kauai.

Long range plan. Once the farmable acreage is stabilized and the infrastructure under care, the Kalepa Koalition will move forward with plans to apply for a long term lease for the property under either HRS Chapter 171-59(a) or (b). However, these discussions have not advanced to the point where we have any meaningful detail to share with the Board.

One theory is that the entity when organized, will lease all of the farmable land and the infrastructure that support it, then be responsible for making lands available to members/users under sub-leases or other types of use agreements on a shared rent, shared cost basis. State oversight would be a part of the process.

Another alternative that will be explored is the possibility of subdividing these lands based on the economic units created, and disposing of long term leases at public auction. However, subdivision requirements will need to be explored, including the required infrastructure extensions and/or upgrades where there are presently none. Additionally, a cultural and historical survey of the lands will need to be conducted, as well as a possible environmental assessment should a master plan identify uses over and above what is being recommended.

Other issues. As the Board considers the issuance of revocable permits, it should do so with the understanding that there are other important issues that need to be resolved, such as:

- the amount of rent the stakeholders will be expected to pay after the 3 month rent waiver expires. The Kalepa Koalition, by letter dated 1/24/01, and attached as Attachment G, is requesting that the rent be established at \$5 per acre per year, "...subject to appraisal and renegotiation in five years, due to the extraordinary effort, expense and personal risk

August 24, 2001

involved in taking control of 10 square miles of land now overrun on a daily basis by hunters, bikers and sightseers who are cutting chains, locks and metal gates with welding equipment on a daily basis";

- to what degree, if any, will State or County programs participate in the operation, maintenance and upgrades to the property, especially in regards to providing irrigation water to the land. As stated earlier above, a Water Permit for the water segment will be submitted shortly to the Land Board for consideration.

There are two possibilities. One is the East Kauai Water Users Association, which is now in the process of being formed as a result of Lihue Plantation's GL 3827 being terminated shortly. This association is being formed to take control of the reservoir and ditch system in the Kapaa area. The second is that the Kalepa Koalition apply for the permit. In either case, the water system needs to be addressed after the land issue is settled. SEE Attachment H.

- will the prospective permittees be shielded from liability for unanticipated environmental situations if such are found after they move onto the property;
- to what degree will Amfac leave the property in good working order;
- these lands have never been culturally or historically surveyed. Certainly before a lease is issued, this concern needs to be resolved. In the interim, the permittee's will need to cooperate with the DLNR island archaeologist and the County's cultural sites committee.
- DOFAW has identified miconia sites within the adjacent river valleys. Access and staging areas need to be provided by the permittees.
- State Parks may require land area above the tourist attraction Fern Grotto for pumping and disposal purposes;

- The president of the Kauai Hunting Association requested that additional cane land areas be added to the adjacent Wailua Game Management Area. KDLO provided a response dated 1/30/01. Mr. Yamauchi responded, and included a complaint to the Attorney General. SEE Attachment I collectively.

A withdrawal condition already exists in our standard permit template should the need arise for additional hunting areas. This need would be related to the loss of hunting lands due to an on-going project for the designation of critical habitat's by the U.S. Fish & Wildlife Service, and our inability to provide alternate land areas. Additionally, the DOFAW as manager of hunting lands and programs is not prepared for an increase in their land inventory due to budget and personnel constraints.

The provision of hunting areas, with tenants using the land, especially with month to month permits, would not be appropriate nor safe. This matter can be better addressed prior to a long term encumbrance being issued for the property, or upon request by DOFAW.

Additional conditions of approval. It has been determined that performance conditions for these permits should be established, as follows:

- Permittees shall be required to maintain (keeping ditches free and clear of vegetative overgrowth, and/or from destruction by livestock) the existing irrigation system as it currently exists within each unit. Filling in of these ditches shall not be permitted without Historic Preservation and KDLO review and approval.
- A development and use plan shall be developed and submitted within 3 months from the commencement date of each permit, and adhered to by each permittee.
- At such time that a water management permit or license for conveyance of irrigation water onto State lands is approved by the Board, permittee shall participate as a member of any such group

or organization. Failure to participate shall result in termination of this permit.

- Permittee shall maintain all common element roadways as they impact their unit.
- Water, reservoirs and main transmission ditches, as may be identified by the water licensee, shall be under the control of the water user group.

Kalepa Koalition Request for the inclusion of a buy back condition. Due to the high cost of land clearing, extensive fencing, gating, irrigation ditch restoration & maintenance, etc., the 13 member user group has requested the inclusion of a buy-back condition, to read as follows:

"For a period of 10 years, the State agrees to require any lessee taking over the Kalepa area from the present group of permit holders to buy back the improvements made by them at a prorated value of 10% per year. These items are: 1) fencing at a set rate of \$5.00/foot; 2) improvements to the common element roadways and gates at cost; 3) initial land clearing and leveling (but not on-going pasture maintenance) at cost; 4) long term agricultural improvements, such as water storage tanks, catchment systems, processing plants, etc., at cost. The permittee will keep close records of all such expenses."

The Kalepa Koalition members are concerned of the possibility that the entire Kalepa parcel could be put to public auction within a few years and all of the investment amounting to more than a million dollars which the members put into the land will be lost.

Staff comment: While staff understands the coalition concerns, the issuance of month to month permits has an inherent risk for users of State land who face the potential public auction possibility. However, because of the Land Division's masterplanning efforts for the property, it will also require County subdivision. The subdivision process itself could take up to 5+ years, based on possible infrastructure requirements and/or improvements, and the need for a cultural/historical survey.

Staff is of the opinion that the period should be reduced to no less than 5 years, but could be extended based on the length of time it takes to obtain final subdivision approval. Additionally, the improvements impacted by a buy-back condition should only be limited to fencing (at \$2.50/ft), gating, and permanent irrigation improvements.

Set Asides. Land areas are being identified by government agencies for their programs:

- State Parks requires additional land area on the plateau in order to provide a lift station for the restrooms at the Fern Grotto State park, sewage disposal leach field, and for a possible buffer zone around Wailua Falls.

The land area involved (approximately 5-10 acres +/-) is adjacent to the river valley, and was previously utilized for the growing of sugarcane. This area can be reduced should a condition be placed on the permit areas around the Wailua Falls maintaining a vegetative buffer zone around the valley rim. Additionally, the area requested by State Parks impacts a major access roadway into these lands by the tenants. Land use and tenant traffic needs should be established before additional land areas around Wailua Falls is considered for setaside. For the lift station and leach field use, Chapter 343 requirements must be met prior to the implementation of the lift station and leach field portions of this project.

- DOFAW has requested additional land area for the addition to the Lihue-Koloa Forest Reserve, and to straighten out the boundary line. The two land areas involved were previously utilized for the growing of sugarcane, and totals approximately 52 acres.
- The County of Kauai has requested approximately 18 acres in which to relocate their moto-cross track to a permanent location. Their existing track in Wailua, adjacent to a resort development

and the Wailua Golf Course, needs to be relocated due to adverse dust and noise impacts.

The land area involved was previously utilized for the growing of sugarcane. Of concern by the coalition group is the need for the County or its designee to strictly monitor the activities of the users of the motocross track to limit their activities to the site, and not the surrounding agricultural lands. If this cannot be ensured, the set aside should be cancelled.

A separate access to this site shall be developed by the County. Additionally, appropriate landscaped earthberms and setbacks shall be established at the time County permits are sought. This area shall also be subdivided out of the larger piece by the County.

- DAR has requested land areas (which have 9 earthern ponds) in order to overall, enhance recreational fishing opportunities for the general public and visitors, and by (specifically) creating a resource base for a new series of industries to center around freshwater fishing and its needs. This would include the creation and development of stock enhancement programs. There are 3 elements to this program: land area in Hanapepe has already been approved for set aside, and is to function as a hatchery site; the subject area with 9 ponds would function as grow out ponds. The third element is Sloggett Reservoir in Wailua Homesteads (previously encumbered by lease to East Kauai Water Co.), which currently is publicly fished by trespass.

The subject land areas were waste areas (valley) within the sugarcane plantation.

The areas subject of these set asides do not impact the overall use scheme of the government lands. They would be considered the highest and best use given the previous agricultural use of the land, zoning, topography, and location. They in turn would enhance



public recreational opportunities where none presently exist, and preserve agricultural lands for agricultural uses.

Considerations. All of these issues and more are under active discussion and we will soon have answers for all of them. Meanwhile, we are driven to move forward with getting users on the land because we believe that placing this property under immediate care fulfills our trust responsibility as land managers. Additionally, DOCARE and DOFAW have already notified KDLO of the increasing numbers of hunters, motocross and 4-wheel drive vehicles accessing the land areas.

RECOMMENDATION: That the Board

- A. Find that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, the disposition will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of any environmental assessment.
- B. Authorize the issuance of revocable permits to the following entities: Godwin M. Esaki; Lara Butler dba Keapana Horsemanship; G.E. Farms, Inc.; Leslie P. Milnes; Rodolfo N. & Aurora Bunao; Elesther Calipjo; Michael J. Fernandez; William J. & Alison J. Sanchez; Saiva Siddhanta Church; Manuel H. Andrade, Sr.; Gerald M. Sanchez; Kenneth Bray; and Kelly Gooding covering the subject areas for the uses reflected in the Character of Use section above under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  1. The standard terms and conditions of the most current revocable permit form, as may be amended to accommodate the circumstances of this request.
  2. Review and approval by the Department of the Attorney General;
  3. a. Permittee shall not be held liable for existing conditions which may be associated with previous use of the land by Amfac.

- b. Permits will subordinate to any long term leases .
  - c. Acceptance of these permits will be subject to final inspection of the premises.
  - d. Permittee shall maintain the existing vegetative buffer zones along the plateau and valley rims. Any clearing or trimming activities shall be upon approval of the district office, in consultation with State Parks and Forestry.
  - e. Permittee for Unit J shall permit access through the property.
  - f. Permittee shall be required to maintain (keeping ditches free and clear of vegetative overgrowth, and/or from destruction by livestock) the existing irrigation system as it currently exists within each unit. Filling in of these ditches shall not be permitted without Historic Preservation and KDLO review and approval.
  - g. A development and use plan shall be developed and submitted within 3 months from the commencement date of each permit, and adhered to by each permittee.
  - h. At such time that a water management permit or license for conveyance of irrigation water onto State lands is approved by the Board, permittee shall participate as a member of any such group or organization. Failure to participate shall result in termination of this permit.
  - i. Permittee shall maintain all common element roadways as they impact their unit.
  - j. Water, reservoirs and main transmission ditches, as may be identified by the water licensee, shall be under the control of the water user group.
4. With the issuance of these permits, the permittees agree to collectively be responsible for the maintenance and operation of the infrastructure necessary to support the permittees use of the land.

5. Permittee's shall cooperate with any government requirements, specifically relating to cultural and historical site identification; miconia eradication; expansion of State Parks, etc.
6. Conditions and requirements as discussed above
7. As recommended by the Historic Preservation Division:
  - a. In former sugarcane lands, plantation era historic sites such as bridges and irrigation ditches shall be preserved or shall be maintained. If it is proposed to destroy these historic sites, then the State Historic Preservation Division shall be contacted to determine what if any site documentation is needed (742-7033).
  - b. No land clearing or land alteration may take place in the gulches or wastelands (gullies, valleys, ridges and mountains) without the following steps taking place: (a) The Historic Preservation Division (742-7033) shall be contacted by the applicant to discuss the proposed undertaking and to enable the Division's staff to conduct a field check to determine if historic sites are present. (b) If historic sites are present and the undertaking will likely impact them, the applicant shall have an archaeologist inventory survey be conducted by a qualified archaeologist prior and an acceptable survey report shall be submitted to the State Historic Preservation Division for review and approval. This report shall identify any significant historic sites and propose any mitigation measures that are needed. (c) If significant historic sites are found and mitigation is needed, then detailed mitigation plans (scopes of work) shall be submitted to the State Historic Preservation Division for review and approval, and these plans shall be successfully executed prior to any land alteration.
  - c. If burials are discovered, a burial treatment plan shall be prepared for burial discoveries encountered during the project. In addition, consultation with the appropriate ethnic groups, the procedures outlined in Chapter 6E-43 shall be followed. It is necessary for the treatment plan to be prepared

after consultation with native Hawaiians, such as the Kauai Island Burial Council and the Office of Hawaiian Affairs.

8. Should a long term lease for the entire Kalepa property be offered at public auction within 5 years from the date of permit commencement, or prior to final subdivision approval, whichever shall first occur, any buyback consideration shall be limited to: permittee expenditures for fencing (at \$2.50/foot), security gating, and permanent irrigation improvements.
9. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

C. Approve the set aside of lands identified above, and recommend to the Governor the issuance of Executive Orders setting aside the subject areas to the DLNR Division of Forestry and Wildlife; DLNR Division of State Parks; DLNR Division of Aquatic Resources, Freshwater Fisheries Development; and the County of Kauai, subject to the terms and conditions cited above, which are by this reference incorporated herein, and subject further to the following:

1. The standard terms and conditions of the most current executive order form, as may be amended from time to time.
2. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside.
3. Review and approval by the Department of the Attorney General.
4. Requirements as set forth in the section above entitled "Government Agency Requirements for Set Aside."
5. For the land area to be set aside to the County (designated "EO 4" on the map attached hereto), the County or its designee shall operate and manage the activities of the facility users. If such cannot be done, the set aside shall be cancelled.

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Additionally, a separate access to the site from Maalo Road shall be developed; appropriate landscaped earthen berms and setbacks shall be established at the time County permits are sought.

6. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.


D. Authorize the issuance of immediate rights-of-entry to the above named entities for management and site control purposes, subject to the following:

1. The standard terms and conditions of the most current right of entry document form, as may be amended from time to time.
2. Such other terms and conditions of the most current right of entry document form, as may be amended from time to time.

Respectfully Submitted,



SAM LEE

 Kauai District Land Agent

APPROVED FOR SUBMITTAL:



GILBERT S. COLOMA-AGARAN, Chairperson

